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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/636,115	08/07/2003	Ronald W. Call	2000.149	1583
29494	7590	12/18/2006		
HAMMER & HANF, PC 3125 SPRINGBANK LANE SUITE G CHARLOTTE, NC 28226			EXAMINER WEINER, LAURA S	
			ART UNIT	PAPER NUMBER
			1745	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/18/2006	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/636,115

Applicant(s)

CALL, RONALD W.

Examiner

Laura S. Weiner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 6-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 11-3-06 have been fully considered but they are not persuasive. Applicant argues that Kurauchi et al. does not teach bonding together by heat with a temperature greater than 145 degrees C instead teaches a lower temperature therefore Kurauchi et al. does not teach the claimed separator. The examiner disagrees because even though Kurauchi et al. teaches a lower temperature range, Kurauchi et al. teaches the same multi-layered microporous separator film and that the determination of patentability is based upon the product itself not upon the method of its production. *In re Thrope* 227 USPQ 964; *In re Brown* 173 USPQ 685; *In re Bridgeford* 149 USPQ 55; *In re Wertheim* 191 USPQ 90. Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the Examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the Applicants to establish that their product is patentably distinct. *In re Brown* 173 USPQ 685 and *In re Fessmann* 180 USPQ 324.

2. Applicant's arguments with respect to claims 1-5 have been considered but are moot in view of the new ground(s) of rejection.

Election/Restrictions

3. Applicant's election without traverse of Group I, claims 1-5 in the reply filed on 6-23-06 is acknowledged.

Claims 6-31 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 6-23-06.

Claim Rejections - 35 USC § 102

Claim Rejections - 35 USC § 103

4. Claims 1-4 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kurauchi et al. (5,691,047).

Kurauchi et al. teaches in column 6, lines 61-65, that the porous multi-layer film has a three-layered structure having polypropylene layer-polyethylene layer-polypropylene layer. Kurauchi et al. teaches in column 7, lines 19-25, that the peel strength is not less than 3 g/15 mm, generally in the range of 3 to 60 g/15 mm ***[0.2-4 g/mm][claim peel strength 1.6 g/mm]*** and a thickness of 20-60 um ***[claim less than 25 um or less than or equal to 20 um]***. Kurauchi et al. teaches in column 6, lines 42-65, that the polypropylene film(s) and polyethylene film can be preferably united by pressing laminated films with heating. The polypropylene film and polyethylene film preferably has a thickness in the range of 5-20 um and an appropriate thickness can be chosen from the viewpoints of the desired thickness of the porous multi-layer film obtained by the stretching procedure and the desired use of the porous film.

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In the event any differences can be shown for the product of the product by process claim 1, as opposed to the product taught by Kurauchi et al., such differences would have been obvious to one of ordinary skill in the art as a routine modification of the product in the absence of a showing of unexpected results. *In re Thrope* 227 USPQ 964; (*Fed. Cir.* 1985).

With respect to the product by process claim 1, the determination of patentability is based upon the product itself not upon the method of its production. *In re Thrope* 227 USPQ 964; *In re Brown* 173 USPQ 685; *In re Bridgeford* 149 USPQ 55; *In re Wertheim* 191 USPQ 90. Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the Examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the Applicants to establish that their product is patentably distinct. *In re Brown* 173 USPQ 685 and *In re Fessmann* 180 USPQ 324.

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kurauchi et al. (5,691,047).

Kurauchi et al. teaches in column 6, lines 61-65, that the porous multi-layer film has a three-layered structure having polypropylene layer-polyethylene layer-polypropylene layer. Kurauchi et al. teaches in column 7, lines 19-25, that the peel strength is generally in the range of 3 to 60 g/15 mm **[0.2-4 g/mm]** and a thickness of 20-60 um. Kurauchi et al. teaches in column 6, lines 42-65, that the polypropylene film

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and polyethylene film preferably has a thickness in the range of 5-20 μm and an appropriate thickness can be chosen from the viewpoints of the desired thickness of the porous multi-layer film obtained by the stretching procedure and the desired use of the porous film. The polypropylene film(s) and polyethylene film can be preferably united by pressing laminated films with heating.

Kurauchi et al. teaches the claimed invention as explained above except does not teach specifically that the thickness of the multi-layered film has a thickness of less than or equal to 15 μm but does specify that each film can have a thickness as low as 5 μm and that an appropriate thickness can be chosen from the viewpoints of the desired thickness of the porous multi-layer film obtained by the stretching procedure and the desired use of the porous film. Therefore, it would be within the skill of the ordinary person depending on the efficiency and cost requirements to adjust each of the polypropylene and polyethylene layers to each have a thickness of 5 μm therefore creating a tri-layered film having a thickness of 15 μm .

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use polypropylene and polyethylene layers each having a thickness of 5 μm therefore creating a tri-layered film having a thickness of 15 μm , since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

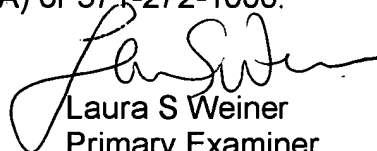
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura S. Weiner whose telephone number is 571-272-1294. The examiner can normally be reached on M-F (6:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Laura S Weiner
Primary Examiner
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December 13, 2006